

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: EXCEL TELECOMMUNICATIONS, INC.	DOCKET NO. TCU-02-3 WRU-02-6-555
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**ORDER GRANTING APPLICATION, APPROVING CONCURRENCE IN MAPS,
AND GRANTING WAIVER**

(Issued March 15, 2002)

On February 8, 2002, Excel Telecommunications, Inc. (Excel), filed an application for issuance of a certificate of public convenience and necessity, pursuant to Iowa Code § 476.29 (2001), stating its intention to provide local exchange service to both residential and business customers in an exchange currently served by Qwest Corporation (Qwest). The application has been identified as Docket No. TCU-01-22. Excel has provided the qualifications of its company officers and financial statements and has offered a toll presubscription plan to support dialing parity.

Iowa Code § 476.29(2) provides that the local exchange carrier shall not be denied a certificate if the Utilities Board (Board) finds that the applicant "possesses the technical, financial, and managerial ability to provide the service it proposes to render and the Board finds the service is consistent with the public interest."

The Board has reviewed Excel's application and finds the necessary technical, financial, and managerial abilities to provide local exchange service have been demonstrated. It is in the public interest to approve Excel's application.

Excel also states that its service area will mirror the service territory of exchanges and service area maps of Qwest as they are currently filed and may be modified in the future. Iowa Code § 476.29(4) requires that each certificate define the service territory in which land-line local telephone service will be provided and authorizes the Board to promulgate rules establishing the requirements for filing maps showing the service territory. Subrule 199 IAC 22.20(3) requires that all utilities have maps on file with the Board, which show exchange boundaries. The Board finds that Excel has complied with the statutory and rule requirements by concurring in the exchange maps of Qwest.

Excel has requested the Board waive the requirements of 199 IAC 22.3(1), 199 IAC 16.5(2), and 199 IAC 18.2. The waiver requests were identified as Docket No. WRU-02-6-555.

Excel requests a waiver of 22.3(1), requiring it to independently publish a directory. The Board will grant the waiver based upon Excel's statement that it will arrange for its customers to be included in Qwest's directories.

Excel also has requested a waiver of 199 IAC 16.5(2), which requires the keeping of records according to the uniform system of accounts. Excel states it will maintain its books in accordance with generally accepted accounting principles (GAAP). The Board finds this waiver should be granted since records kept in accordance with GAAP accounting are acceptable for a competitive local exchange service provider.

Excel has also requested the requirements of 199 IAC 18.2 be waived. The rule requires that a regulated public utility keep its records in Iowa. The Board will

grant the waiver based on Excel's statement that it will make the records available to the Board upon request.

Rule 199 IAC 1.3 states that the Board may grant waivers of its rules, based upon clear and convincing evidence, that the application of the rule would pose an undue hardship, the waiver would not prejudice the substantial legal rights of any person, the provisions waived are not specifically mandated by statute, and substantially equal protection of public health, safety, and welfare will be afforded after the waiver. The Board has considered the waiver request as described above and finds that the waiver meets the four criteria of the rule and the evidence in support of the waiver is clear and convincing.

Adherence to these rules would be an undue hardship on a competitive telecommunications company just beginning to do business in Iowa and would be an undue hardship on Excel because other competitive carriers have been granted similar waiver requests. The Board finds there are no substantial legal rights of any person that are affected by these waivers and there is no statute that specifically mandates the actions waived. Additionally, the Board finds that there will be substantial equal protection for health, safety, and welfare provided since the action waived will be completed under different circumstances.

Excel has not filed proposed tariffs for Board approval setting out the prices, terms, and conditions of providing local exchange service. The Board finds that a certificate should not be issued to Excel until it has approved tariffs.

IT IS THEREFORE ORDERED:

1. The application for a certificate of public convenience and necessity filed by Excel Telecommunications, Inc., on February 8, 2002, is granted, subject to the requirements that follow.

2. The Board will issue a certificate of public convenience and necessity allowing Excel Telecommunications, Inc., to provide facilities-based local exchange service upon approval of tariffs to reflect the prices, terms, and conditions, of local exchange service in Iowa. At the time Excel Telecommunications, Inc., files proposed tariffs with the Board, it must give notice to all affected local exchange carriers.

3. The concurrence in the maps and boundaries of the exchanges of Qwest Corporation is approved.

4. The waiver of 199 IAC 22.3(1), 199 IAC 16.5(2), and 199 IAC 18.2, identified as Docket No. WRU-02-6-555, is granted as described in this order.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 15th day of March, 2002.